

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Telephone Number Portability

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CC Docket No. 95-116
RM 8535

AT&T OPPOSITION TO PETITIONS FOR RECONSIDERATION
AND CLARIFICATION

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Summary

The Order at issue in this proceeding (the "First Report and Order") is the culmination of years of work by the industry, state and federal regulators, and Congress itself, and is based on one of the most extensive records this Commission has ever compiled. Beginning in 1994, industry participants, including LECs, interexchange carriers, competitive access providers, wireless carriers and manufacturers, regularly convened to propose technical solutions for the provision of number portability that would resolve operational concerns while promoting local competition. At least five alternative number portability solutions were subject to extended and intense industry scrutiny during these meetings. As this process progressed, the location routing number ("LRN") data base solution clearly emerged as the industry choice.

In mid-1995, building on the collaborative efforts discussed above, the Commission issued its Notice of Proposed Rulemaking ("the Notice") in this docket, inviting comment on the benefits of number portability, technical solutions, implementation schedules, and methods of cost recovery. The Commission compiled an extensive record. In February 1996, Congress answered many of the questions raised by the Commission in the Notice by requiring all LECs to provide, to the extent technically feasible, number portability pursuant to the Telecommunications Act of 1996 (the "1996 Act"). In response to the 1996 Act, the Commission issued a Public Notice for Further Comments (the "Public Notice"), providing the industry with yet another opportunity to furnish information. The Commission's deliberations were further informed by reports of a number of state commissions, which were themselves

moving forward with proceedings exploring the development and implementation of number portability. Based on this extensive record, the Commission issued the First Report and Order.

Against this background, incumbent local exchange carriers seek reconsideration of the First Report and Order, and each of its aspects they deem to threaten their local monopolies. They claim that the Commission has misread the statute, ignored or misinterpreted evidence in the record, and failed to consider facts or evidence that they have now belatedly supplied. The Commission should recognize these Petitions for what they are -- the latest in a series of diversionary tactics designed to forestall the implementation of number portability.

The belatedness of their efforts notwithstanding, the LECs' claims regarding QOR do not come close to meeting the standards for reconsideration. Most, if not all, of the LECs' claims were presented to the Commission, thoroughly considered, and properly rejected. In this regard, many of the "new" facts and evidence presented to the Commission are really not new at all. To the extent that petitioners do present new arguments or data, they fail to make the showing required by the Commission's rules that such facts or information were unavailable prior to adoption of the First Report and Order. The Petitions thus could, and should, be dismissed on procedural grounds alone.

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OPPOSITION OF AT&T CORP.

AT&T Corp. ("AT&T") hereby opposes the petitions for reconsideration (the "Petitions") of the Commission's First Report and Order (the "First Report and Order") regarding the implementation and deployment of permanent number portability, as required by the Telecommunications Act of 1996.¹

Introduction

The Order at issue in this proceeding is the culmination of years of work by the industry, state and federal regulators, and Congress itself, and is based on one of the most extensive records this Commission has ever compiled. Beginning in 1994, industry participants, including LECs, interexchange carriers, competitive access

¹ In the Matter of Telephone Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, released July 2, 1996, FCC 96-286. Annexed as Attachment A is a list of parties submitting petitions for reconsideration of the First Report and Order, and the abbreviations used to refer to these parties. AT&T responds to all of these petitions with this Opposition.

providers, wireless carriers and manufacturers, regularly convened under the auspices of the Industry Numbering Committee ("INC") to propose technical solutions for the provision of number portability that would resolve operational concerns while promoting local competition. At least five alternative number portability solutions were subject to extended and intense industry scrutiny during these meetings.² As this process progressed, the location routing number ("LRN") data base solution proposed by AT&T clearly emerged as the industry choice.

In mid-1995, building on the collaborative efforts discussed above, the Commission issued its Notice of Proposed Rulemaking ("the Notice") in this docket, inviting comment on the benefits of number portability, technical solutions, implementation schedules, and methods of cost recovery.³ The Commission compiled an extensive record. Comments were filed by more than sixty parties, including industry participants, consumer groups, and state commissions. These and other parties continued to supplement the record through the ex parte process.⁴

2 These proposals included the Stratus Computer/US Intelco "dual number" proposal, the MCI Metro carrier portability code ("CPC") proposal, the GTE "non-geographic number" proposal, the AT&T/Lucent location routing number ("LRN") proposal, and, eventually, the Pacific Telesis release-to-pivot ("RTP") proposal. See, e.g., "Number Portability," A Report of the Industry Numbering Committee's Number Portability Workshop, INC 17 Draft.

3 In the Matter of Telephone Number Portability, CC Docket No. 95-116, Notice of Proposed Rulemaking, FCC 95-284, released July 13, 1995.

4 See, e.g., Ex Parte Presentation of MCI, filed April 23, 1996.

In February 1996, Congress answered many of the questions raised by the Commission in the Notice by requiring all LECs to provide, "to the extent technically feasible," number portability "in accordance with requirements prescribed by the Commission."⁵ The 1996 Act defined number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."⁶ Congress also decreed that costs of implementing number portability must be recovered "on a competitively neutral basis as determined by the Commission."⁷ In response, the Commission issued a Public Notice for Further Comments (the "Public Notice"),⁸ providing the industry with yet another opportunity to furnish information. The Public Notice generated more than 30 comments and replies, and dozens of ex parte submissions.

The Commission's deliberations were further informed by reports of a number of state commissions, which were themselves moving forward with proceedings exploring the development and implementation of permanent number portability. The Illinois Commerce Commission, for example, brought together a wide range of

5 See Telecommunications Act of 1996 ("1996 Act"), Section 251(b)(2).

6 Id., Section 3(30).

7 Id., Section 251(e)(2).

8 In the Matter of Telephone Number Portability, CC Docket 95-116, Public Notice for Further Comments, DA 96-358, released March 14, 1996.

industry participants, helped guide these participants to agreement on number portability implementation issues, raised and addressed numerous operational issues, and developed a firm schedule for deployment of number portability capabilities in the Chicago area.⁹ The Georgia Public Service Commission similarly developed an implementation schedule for number portability deployment in the Atlanta area.¹⁰

Based on this extensive record, the Commission issued the First Report and Order. All of its findings and conclusions, including those challenged by petitioners, are consistent with the statute and amply supported by the record. In particular, the First Report and Order finds that number portability is technically feasible, establishes nine performance criteria to which any permanent number portability solution must fulfill, and applies those criteria to some of the solutions proposed in this proceeding.¹¹ In this regard, the First Report and Order finds that LRN satisfies the performance criteria, but that another portability proposal, Query-on-Release, does not.¹² This is in no way surprising: the criteria adopted by the

9 See generally Joint Petition for Approval of Stipulation and Agreement Relating to the Implementation of Local Number Portability, Illinois Commerce Commission Proceeding No. 96-0089, Order, ("ICC Order"), dated March 16, 1996.

10 See generally Local Telephone Number Portability Under Section 2 of the Telecommunications Competition and Development Act of 1995, Georgia Public Service Commission Docket No. 5840-U, Order, ("GPSC Order"), dated February 20, 1996.

11 First Report and Order, paras. 54-56.

12 Id.

Commission are consistent with those considered by the industry and state workshops,¹³ as are its findings with respect to LRN and QOR. Moreover, the First Report and Order adopts a number of principles to reduce and eventually eliminate the barrier to entry that the lack of number portability erects.¹⁴ In particular, the First Report and Order adopts a reasonable, phased implementation schedule for implementation of a permanent solution, and requires that costs for any interim solutions are recovered in a competitively neutral manner.¹⁵

Against this background, incumbent local exchange carriers -- the beneficiaries of the barrier to entry that the 1996 Act and the First Report and Order seek to dismantle -- seek reconsideration of the First Report and Order, and each of its aspects they deem to threaten their local monopolies. They claim that the Commission has misread the statute, ignored or misinterpreted evidence in the record, and failed to consider facts or evidence that they have now belatedly supplied.

These tactics, and underlying claims, should be summarily rejected. They represent, unfortunately, further execution of a game plan laid out by many incumbents two years ago. Initially, many ILECs asserted in this and other proceedings that permanent number portability was not feasible at any point in the foreseeable future. When that claim was disproven early in the process, some ILECs

13 See, e.g. GPSC Order, Appendix A; ICC Order pp. 2-4.

14 First Report and Order, para. 48.

15 Id., paras. 77-85; 121-140.

switched tactics and began advocating a solution that was manifestly anticompetitive.¹⁶ Finally, when faced with irresistible momentum toward meaningful number portability, these ILECs concocted the QOR "solution" -- which they now desperately attempt to salvage with the Petitions. The Commission should recognize these Petitions for what they are -- the latest in a series of diversionary tactics designed to forestall the implementation of permanent number portability in a manner that will allow consumers to base choice of local service provider solely on considerations of value offered by competing carriers.

The belatedness of their efforts notwithstanding, the LECs claims regarding QOR do not come close to meeting the standards for reconsideration.¹⁷ Indeed, most if not all of the LECs' claims, including claims about the magnitude of costs, implementation schedule, reliability and cost recovery were presented to the Commission, thoroughly considered, and properly rejected. In this regard, many of the "new" facts and evidence presented to the Commission are really not new at all.¹⁸ To the extent that petitioners do present new arguments or data, they fail to make the

¹⁶ See, e.g., In the Matter of Telephone Number Portability, CC Docket 95-116, Comments of Pacific Bell, p. 19 (proposing RTP non-database "solution"), filed September 12, 1995.

¹⁷ See 47 C.F.R. § 1.429(b); In re Application of American Broadcasting Companies, Inc. For Renewal of License of Station KGO-TV, 90 F.C.C.2d 395, 401 ("[w]e have repeatedly held that ' . . . reconsideration will not be granted merely for the purpose of again debating matters on which we have already deliberated and spoken.'")

¹⁸ See infra, pp. 13; 16-17.

showing required by the Commission's rules that such facts or information were unavailable prior to adoption of the First Report and Order.¹⁹ The Petitions thus could, and should, be dismissed on procedural grounds alone.

I. The Commission Was Correct In Concluding That QOR Does Not Meet Applicable Performance Criteria And In Rejecting Its Use By Any Carrier to Provide Permanent Number Portability

In the First Report and Order, the Commission properly accepted the responsibility, assigned to it by Congress, to develop national number portability policy and to prescribe the requirements that all LECs must meet to fulfill their statutory obligations to provide number portability.²⁰ The Commission determined that it could best ensure the interoperability of carrier networks and national uniformity, while affording carriers and equipment vendors flexibility, by establishing nine specific performance criteria for any number portability solution selected by a LEC.²¹ No party has challenged the validity of these criteria -- nor should any party, because the criteria

19 In the Matter of Creation of Additional Private Radio Service, Gen Docket. No. 83-26 Memorandum and Opinion, 1 FCC Rcd. 5, 7-8 (1986) ("Our standards and requirements for petitions for reconsideration are well established by rule and case law . . . Reconsideration based on new facts is appropriate only when these facts relate to events subsequent to the last opportunity for submission or which were unknown and could not have been known by the petitioner at the time of the last opportunity, or when the Commission determines that subsequent consideration is required to protect the public interest.")

20 First Report and Order, paras. 36-37.

21 Id., para. 48.

embody principles embraced by inclusive industry bodies, state commissions, and industry participants.²²

Taking into account all available technical and operational information, the Commission concluded that QOR failed to meet its number portability performance criteria.²³ Specifically, due to its discriminatory treatment of calls to "ported" and "non-ported" numbers; the discriminatory and anticompetitive increases in call set-up time that it imposed, the reliance on ILEC networks that QOR required, and the delays in implementation of number portability that it could cause, the Commission concluded, among other things, that QOR failed to meet the fourth and sixth performance criteria.²⁴ The Commission also determined that QOR would not produce significant cost savings, and that in all events such savings do not outweigh QOR's anti-competitive effects.²⁵

The Petitions first ask the Commission to "clarify" the First Report and Order to make clear that carriers are not prohibited from using QOR "within their own networks."²⁶ These requests for "clarification" are absurd, and should be summarily

22 See, e.g., GPSC Order, Appendix A; ICC Order, pp. 2-4; Ex Parte Presentation of Ameritech, filed February 21, 1996; Ex Parte Presentation of AT&T, filed June 6, 1996; Ex Parte Presentation of GTE, filed March 27, 1996; Ex Parte Presentation of Time Warner Communications, filed May 15, 1996.

23 First Report and Order, paras. 54, 56.

24 Id., paras. 54, 56.

25 Id., para. 54.

26 See, e.g., NYNEX Petition, p. 3.

rejected. QOR was, from the outset, proposed for use "within a carrier's network,"²⁷ and it was on this basis that the Commission rejected it. This is confirmed by the fact that virtually all of the information provided to the Commission demonstrating QOR's anti-competitive effects and attributes analyzed its use within an ILEC's network.²⁸ Moreover, allowing use of QOR "within" an ILEC's network would create the very conditions (discriminatory call treatment, discriminatory call set-up time, and anti-competitive, forced reliance on ILEC networks) that the First Report and Order determined -- and the 1996 Act deemed -- unacceptable. The Commission does not need to clarify its obvious prohibition of QOR; rather, it needs to make clear to ILECs that all facilities must be interconnected to all networks on a non-discriminatory basis.²⁹

The Petitioning ILECs next ask the Commission to reconsider the First Report and Order to the extent that it prohibits use of QOR altogether. The petitioning

27 In the Matter of Telephone Number Portability, CC Docket No. 95-116, Further Comments of Pacific Bell, pp. 3-4, filed March 29, 1996.

28 See, e.g., Ex Parte Presentation of AT&T, filed May 22, 1996; Ex Parte Presentation of AT&T, filed April 24, 1996; Ex Parte Presentation of MCI, filed April 23, 1996.

29 During the Commission's consideration of the rules to governing interconnection and other obligations of local exchange carriers, ILECs made the similarly astonishing claim that the non-discriminatory interconnection obligations of Section 251(c)(2) required an ILEC to treat all CLECs equally, but did not constrain the ILEC's treatment of itself or its affiliates. The Commission rejected this claim, see In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order ("Local Competition First Report"), para. 203, released August 8, 1996, and should similarly reject the claim here.

ILECs offer four separate grounds for reconsideration. As discussed more fully below, each ground is without merit.

A. QOR Degrades the Quality and Reliability of Service When Local Exchange Customers Choose to Switch Carriers.

As noted above, the Commission determined that QOR fails the sixth performance criterion, because it degrades service of customers that change local exchange carriers.³⁰ The Commission grounded this finding on a fundamental undisputed characteristic of QOR: the QOR scheme, on calls to telephone numbers in NXX codes assigned to the ILEC, invariably routes calls to the switch to which a number was originally assigned.³¹ Among other things, this results in incremental post dial delay ("PDD") for customers that switch carriers, delay not experienced by customers who do not switch carriers. Further, the length of PDD is increased under QOR in comparison to LRN.

The petitioning ILECs nevertheless seek reconsideration on the ground that any post dial delay caused by QOR is experienced only by the calling customer, who is served by the ILEC utilizing QOR. The called customer, who is served by a competing carrier, supposedly suffers no inconvenience, because he or she is unaware that a call is being attempted until such time as it has been completed. Thus, these

³⁰ First Report and Order, para. 56.

³¹ See PacTel Petition, pp. 2-3.

parties assert, that PDD caused by QOR does not adversely affect CLEC customers, and will not deter subscribers from sampling CLEC services.

As the record demonstrates, however, this contention is meritless. Call set-up is an important factor for many local exchange subscribers, including business customers and subscribers with call centers that must receive and respond to a large number of calls.³² These customers would undoubtedly be dissuaded from choosing CLEC services that would entail increased call set up time. Indeed, for such customers, QOR would simply change the "price" of choosing CLEC service from loss of telephone number to loss of call processing efficiency. The Commission was clearly correct that it would not be competitively neutral to afford ILECs an advantage in this important market segment.

Moreover, the Commission has not sanctioned the type of PDD caused by QOR in other contexts, as some ILECs maintain.³³ QOR imposes incremental PDD uniquely on calls to customers who have "ported" their numbers to competing carriers, thus depriving them of the ability to retain their numbers when switching local service providers without impairment of quality, reliability, and convenience.³⁴ The Commission's other orders implementing the local competition provisions of the 1996 Act have in no way permitted local exchange carriers to implement methods of call

³² See Ex Parte Presentation of AT&T, filed May 22, 1996.

³³ See, e.g., PacTel Petition pp. 6-7.

³⁴ See 1996 Act, Section 3(30).

processing that increase call set-up times solely for competing carriers,³⁵ nor could the Commission's orders, consistent with provisions of the 1996 Act based on non-discrimination and intended to ensure number portability³⁶ or dialing parity.³⁷

The petitioning ILECs also challenge the Commission's rejection of QOR on the theory that PDD caused by QOR is imperceptible to customers, and therefore does not cause any reduction in quality or convenience of service. This contention is without basis. Preliminarily, it should be noted that there is no record evidence to support this claim, because no documentation was submitted in the course of comments, replies, and ex parte presentations. Consistent with their overall practices, the petitioning ILECs now tender a two-year-old study purporting to support their contention, but the Commission should reject this submission out-of-hand, because it has been submitted after release of the First Report and Order. The Commission's rules prohibit late submission of new facts and information to prevent precisely the ploy attempted by the petitioning ILECs here -- to insulate unreliable

35 See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98, Second Report and Order ("Local Competition Second Report"), para. 162 (released August 8, 1996 (refusing to measure dialing delays imposed by local exchange carriers on all toll carriers because exchange carriers will have incentive to improve call processing methods)).

36 See 1996 Act, Section 3(30).

37 See Id., Section 251(b)(3).

information from scrutiny by limiting or eliminating the opportunity for response.³⁸

The Commission should emphatically reject such information and these tactics.

Further, even if it were considered, this study would not show that QOR meets the Commission's performance standards. First, the study is limited to only a few customers and suffers from other deficiencies.³⁹ Second, even where PDD is not perceptible to a typical subscriber, it can still reduce the quality and convenience of local service -- especially where calls set-up is delayed for business and other customers receiving calls that must be answered and handled as quickly as possible. Fatally, QOR increases PDD for business and other customers who have "ported" their numbers, imposing a serious "penalty" on such subscribers for switching local

38 The Commission can only consider such information if "(1) the facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission; (2) the facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or (3) the Commission determines that consideration of the facts relied on is required in the public interest." See 47 C.F.R. 1.429. PacTel cannot make either of the first two showings, because the study was published and made available in 1994. See D. MacDonald and S. Archambault, "Using Customer Expectation in Planning the Intelligent Network," Proceedings of the 14th International Teletraffic Congress, June 6, 1994. Nor could PacTel make a credible showing that the public interest now compels consideration of this study -- a survey of 40 individuals who were asked no questions regarding changing local carriers, local competition, or number portability. See *Id.*

39 See *supra* n.39.

exchange carriers. This is precisely the kind of "impairment of quality and convenience" that is prohibited by the 1996 Act.⁴⁰

B. The Record Demonstrates That QOR Requires Competing Carriers to Rely on Network Facilities of Other Carriers

Based on the unqualified admissions of ILEC proponents, the Commission determined that QOR failed its fourth performance criteria because, among other things, QOR forces carriers to rely on network facilities of their competitors to properly route and terminate calls.⁴¹ A number of petitioning ILECs request that the Commission reverse this determination.⁴² These requests should be rejected.

The Commission properly understood and characterized the operation and effects of QOR; it is only the petitioning ILECs that are now attempting to mischaracterize it. By invariably sending an SS7 signaling message to the ILEC switch

40 ILEC references to call set-up times for 800 service are inapposite. See, e.g., Bell Atlantic Petition, p. 6. The Commission's rules for 800 access do not permit discriminatory call set-up times that would discourage customers from switching 800 service providers. Moreover, claims of PDD imperceptibility do not refute the Commission's well-supported finding that QOR reduces reliability of service for "porting" customers, by requiring their new carriers to depend on ILEC switches. This served as an independent basis for concluding that QOR impaired subscribers' ability to "port" numbers. See First Report and Order, paras. 54, 56.

41 Id. paras. 53-54.

42 See, e.g., GTE Petition, p. 10; PacTel Petition, pp. 4, 11.

originally assigned an NXX code before further processing a call,⁴³ QOR requires that competing carriers to rely on ILEC switches and signaling links to perform number portability functions. The First Report and Order correctly recognized this fact.⁴⁴ The Commission also correctly distinguished the reliance on competing carrier facilities mandated by QOR from the SS7 queries performed by an ILEC (or other originating carrier) under LRN; while queries can be performed by an originating carrier in an LRN environment (indeed, AT&T expects that many carriers will agree to such queries for local calls), LRN does not require that a query be performed by an ILEC, or any other carrier originating a call. To the contrary, LRN will permit necessary database queries to be performed by the originating, terminating, or intermediate carrier. This distinction between QOR and LRN is crucial, and fully justifies the Commission's conclusions as to technical performance.⁴⁵

43 See PacTel Petition, p. 3 (stating that under QOR "the Pacific Bell switch serving the caller first sends a short SS7 data message to the Pacific Bell switch to which the exchange [i.e., NXX] is assigned.").

44 First Report and Order, paras. 17, 54.

45 The assertion by ILECs that originating networks will always be in the call path misses the point. While networks of originating carriers are necessarily part of the communications path on all calls, QOR requires that these networks be intimately involved in performing number portability functions, which violates the Commission's rules regarding provision of number portability.

C. The Record Does Not Establish That Use of QOR Will Result in Substantial Savings for Any Carrier

A number of petitioning ILECs argue that the Commission should permit use of QOR on the basis of alleged "cost-savings."⁴⁶ However, claims of QOR cost-savings have already been considered and correctly rejected, and the "additional" evidence they present should not be considered on procedural alone.⁴⁷ In all events, the claims should be rejected on the merits.

Other than asserting that QOR will eliminate "billions of unnecessary queries"⁴⁸ saving ILECs "hundreds of millions of dollars,"⁴⁹ QOR proponents have yet to produce consistent, credible estimates of relative costs and savings of number

46 See, e.g., PacTel Petition, pp. 8-9. As a preliminary matter, even if they had been substantiated -- which they have not -- claims of "cost savings" would not permit use of a portability solution, such as QOR, that does not satisfy the "quality" and "reliability" criteria of the statute. Where, as here, the statutes cites only performance criteria, cost considerations are precluded. See Local Competition First Report, paras. 198-200; 1996 Act, Section 3(30).

47 As with their PDD claims, the petitioning ILECs have rested their new cost claims on cost estimates submitted after the release of the First Report and Order. The Commission cannot properly re-evaluate its earlier determinations based on new, untimely information that does not afford all commenting parties a full and fair opportunity to respond. See C.F.R. § 1.429. Most egregiously, QOR proponents have exacerbated their tardiness by denying other commenters any opportunity to review and address the cost estimates. See PacTel Petition, p. 9 n.12 (not attaching cost estimate due to claims of proprietary information). This is yet another attempt to shield the estimates from scrutiny by providing them to the Commission under seal after the process of information gathering has ceased.

48 See id., p. 7.

49 See id., p. 8.

portability solutions.⁵⁰ The Commission correctly saw through these "moving target" cost estimates and came to the wholly rational and supported conclusion that there was no firm basis in the record to permit use of QOR on cost grounds.⁵¹

Nor would more sound estimates of the costs identified by QOR proponents (by themselves) provide such a basis, because the ILEC cost analysis is incomplete and fundamentally flawed. While QOR proponents have done much to suggest how QOR might reduce signaling costs, they have completely neglected to define and quantify the additional deployment costs that QOR will impose. For example, unlike LRN, QOR requires software to be deployed not only in each end office switch from which customers "port," but in all intermediary switches in the QOR network.⁵² More important, the QOR processing scheme requires deployment of both

50 QOR's chief proponent, for example, originally estimated its own LRN costs at \$229 million over a three year period; this estimate then quadrupled to \$1 billion over the same period, with no rational explanation of the differential. See In the Matter of Telephone Number Portability, CC Docket 95-116, Further Comments of Pacific Bell, p. 7. Next, this proponent estimated that its QOR savings would total \$71 million in the first five years, see Ex Parte Presentation of Pacific Bell, CC Docket No. 95-116, filed June 6, 1996; when this did not sufficiently impress the Commission, this ILEC attempted to increase its savings estimate to \$130 million, after the Commission had adopted and released the First Report and Order. See PacTel Petition, p. 8.

51 Indeed, it appears that the Commission acted wisely on this issue, as some ILECs now acknowledge that their initial savings estimates were inflated. See Bell Atlantic Petition, p.5 n.5. ("[L]ater but still not firm data suggest the total cost without QOR is not as great as we believed, but the percentage savings generated by using QOR is approximately the same.")

52 See Ex Parte Presentation of AT&T, filed May 22, 1996.

QOR and LRN software in each QOR capable switch, effectively doubling initial software deployment costs for QOR.⁵³ Eventually, QOR takes another "bite from the apple" that LRN does not, because QOR software must be removed or disabled when the inevitable evolution to an LRN environment occurs.⁵⁴ Without a complete analysis of these additional costs, the Commission never could have had a basis to permit use of QOR on efficiency or cost grounds.⁵⁵

Finally, the ILEC cost argument misconceives the Commission's role in establishing number portability. The 1996 Act grants the Commission broad discretion to determine how number portability should be implemented in order to promote local exchange competition.⁵⁶ The Commission is fully empowered to prohibit use of QOR to facilitate local exchange competition even if some cost savings might be achieved by ILECs through its use. This is in fact one of the very bases for the Commission's QOR

53 See id.

54 Even its proponents acknowledge that QOR is a transitional measure, and that QOR will be replaced eventually by LRN. See Letter from J.W. Seazholz, Chief Technology Officer, Bell Atlantic, et. al. to D. Smith, VP-Sales, Ericsson, dated March 18, 1996 (requesting "an analysis on the technical and economical feasibility of implementing QOR and transitioning at some point to an N-1 (LRN) solution").

55 As the record shows, QOR actually increases signaling costs when more than 12% of customers served by Lucent switches "port" their telephone numbers, and when more than 23% of customers served by Ericsson switches "port." First Report, para. 54.

56 See 1996 Act, Section 251(b)(2) (imposing on all local exchange carriers the "duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.")

determination,⁵⁷ and the petitioning ILECs have shown no legitimate reason for the Commission to reconsider its judgment.

D. The Record Clearly Demonstrates That QOR Will Not Enhance Network Reliability

A number of the petitioning ILECs assert that the Commission must allow use of QOR because LRN will allegedly require carriers to perform an excessive number of database queries to properly identify the terminating location of calls.⁵⁸ These ILECs contend that QOR will reduce the number of queries necessary for call routing, thus improving network reliability⁵⁹ and diminishing the "risk" to SS7 facilities.⁶⁰

The record requires the Commission to reject these claims. It is precisely because ILECs have incentives to deny pro-competitive interconnection and other arrangements that the Commission has ruled that ILECs must make a "clear and convincing" showing that these arrangements are not technically feasible because they "threaten network reliability."⁶¹ The speculative claims of the petitioning ILECs --

57 See First Report and Order, para. 55 ("on the record before us, we conclude that the competitive benefits of ensuring that calls are not routed through the original carrier's network outweigh any cost savings that QOR may bring in the immediate future").

58 See e.g., PacTel Petition, p. 9

59 See id.

60 See id.

61 See Local Competition First Report, para. 203.

which do not demonstrate the extent to which their network will be "stressed," much less whether reliability will be repaired, -- do not come close to such a showing.⁶²

In fact, the record as a whole shows quite the opposite. State commissions and workshops have examined LRN extensively, along with the signaling and call processing requirements associated with it, and none has concluded that LRN will place an undue or dangerous strain on carriers' signaling facilities.⁶³ The record provides no basis for the Commission to conclude that any solution is technically superior to LRN, and in particular QOR.

II. Permanent Number Portability Can Easily Be Implemented In the Time Frame Established By The Commission

The Commission should summarily reject any assertion that its schedule for implementation of number portability is too ambitious.⁶⁴ The Commission grounded its schedule on showings by AT&T (and other carriers) of the speed with which number portability could be implemented.⁶⁵ The record specifically

62 PacTel, for example, simply asserts that QOR will lessen "the new, huge load on the SS7 network (including addition of new databases) and switch processors," without quantifying the additional "load" on the network or the alleged "load reduction" that QOR will achieve. PacTel Petition, p. 9. Such self-serving pronouncements cannot relieve on ILEC of mandated network modifications that will promote local exchange competition.

63 See generally GPSC Order; ICC Order.

64 See e.g., BellSouth Petition, pp. 10-14; SBC Petition, pp. 10-11.

65 See, e.g., In the Matter of Telephone Number Portability, CC Docket 95-116, Further Reply Comments of AT&T, pp. 3-8 (demonstrating feasibility of

demonstrated that an industry Service Management System ("SMS") could be deployed, that upgrades of carrier networks could be performed,⁶⁶ and that operational issues could be addressed,⁶⁷ all in time for widespread deployment of permanent number portability by the third quarter of 1998. These showings were never refuted in the record by any party, and amply justify the schedule ultimately adopted by the Commission. Moreover, to the extent that specific carriers can make a particularized showing that they cannot meet the Commission's schedule for implementation, the Commission has provided opportunities for relief.⁶⁸

III. The Challenges To The Commission's Interim Cost Recovery Principles Are Baseless.

Finally, three ILECs have sought reconsideration of the Commission's adoption of cost recovery principles that will govern the "interim" provision of number portability through RCF, DID, or other such arrangements.⁶⁹ In particular, these

(footnote continued from previous page)

deployment of permanent number portability in 84 by MSAs by the third quarter 1998); Ex Parte Presentation of AT&T, filed April 24, 1996.

⁶⁶ See, e.g., In the Matter of Telephone Number Portability, CC Docket 95-116, Further Reply Comments of AT&T, p. 4.

⁶⁷ See, e.g., id., pp. 5-7.

⁶⁸ First Report and Order, para. 85.

⁶⁹ See BellSouth Petition, pp. 4-10; CBT Petition, pp. 1-4; GTE Petition, pp. 11-16.